

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
October 15, 2013

v

CHRISTOPHER BERNARD BROWN,

Defendant-Appellant.

No. 311771
Saginaw Circuit Court
LC No. 12-036958-FH

Before: HOEKSTRA, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction of assault, MCL 750.81(4). Defendant was sentenced as a fourth-offense habitual offender, MCL 769.12, to 34 months to 10 years' imprisonment. Because we conclude that defendant has failed to demonstrate any plain error affecting his substantial rights regarding the jury selection process, we affirm.

Defendant's conviction stems from an assault that occurred in December 2011. Defendant choked and slapped the victim, who is the mother of defendant's children and whose testimony was corroborated by her daughter. During trial, defendant claimed that the victim fabricated the assault, and that he was at a friend's home at the time.

During voir dire, the prosecution asked each potential juror whether there was any reason that he or she would be unable to give the trial their complete attention. Two of the jurors who answered affirmatively to that question were eventually excused by the trial court without objection from either party. The first excused potential juror explained that she had a quadriplegic daughter for whom she was the sole caretaker. The second excused potential juror expressed concern because she was an oncologist who had patients that were dying of cancer and who had no one else to care for them.

Defendant's only claim on appeal is that the trial court deprived him of his constitutional right to be tried by a fair jury when it excused the two potential jurors. Because defendant failed to object to the dismissal of either juror during trial, we review this claim of error for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). The defendant must show that an error occurred, the error was plain, and the plain error affected his substantial rights. *Id.* at 763. An error is plain when it is clear and obvious. *People v Jones*, 468 Mich 345, 355; 662 NW2d 376 (2003). Substantial rights are affected when

the defendant is prejudiced, meaning the error affected the outcome of the trial. *Carines*, 460 Mich at 763.

We conclude that defendant is not entitled to relief on appeal because defendant has failed to demonstrate that the dismissal of the jurors by the trial court affected the outcome of the trial. First, defendant does not even allege that the impaneled jury treated him unfairly. Moreover, all the jurors expressed that they would decide defendant's case fairly in accordance with the trial court's instructions and on the basis of the evidence introduced. There is nothing in the record to indicate that dismissal of the two potential jurors prejudiced defendant in any way.

Further, neither party objected to dismissal of the potential jurors and after exercising only four of his five peremptory challenges, defense counsel indicated that he was satisfied with the jury. Defense counsel's specific approval of the jury waived defendant's right to challenge the fairness of the jury on appeal. *People v Carter*, 462 Mich 206, 208-209; 612 NW2d 144 (2000).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra